



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2003

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215

OR2003-9187

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193005.

The Dallas Police Department (the "department") received a request for the completed internal investigation into the hiring of former officer Derrick Evans. You state that some of the requested information has been released. You claim, however, that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You contend that part of the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information you seek to withhold from the submitted internal

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

affairs documents relates to an ongoing homicide investigation. Based on your representations and our review of the submitted information, we find you have demonstrated that release of part of the information you seek to withhold under 552.108 would interfere with law enforcement. Accordingly, we have marked the portions of the information at issue that the department may withhold under section 552.108(a)(1) of the Government Code.

We note that basic information about a crime or arrest is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, basic information about the homicide at issue may not be withheld under section 552.108(a)(1).

We next address your claim under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. The submitted documents include information relating to a polygraph examination. Section 1703.306(b) of the Occupations Code provides that "[a] governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information." We have marked the polygraph examination information that the department must withhold under section 552.101 of the Government Code in conjunction with section 1703.306(b) of the Occupations Code.

The submitted information contains a small amount of mental health information that is subject to section 611.002 of the Health and Safety Code. Section 611.002 applies to "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). We have marked the information that is within the scope of section 611.002 and may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

Next, criminal history record information ("CHRI") is confidential and not subject to disclosure. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, the department must withhold any CHRI falling within the ambit of these state and federal regulations pursuant to section 552.101 of the Government Code.

Next, section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (*citing United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We note the submitted documents contain some personal financial information relating to the former officer. We have marked personal financial information that must be withheld under section 552.101 in conjunction with common-law privacy. We note, however, that part of the submitted information that you seek to withhold under common-law privacy is not highly intimate and embarrassing and is subject to a legitimate public interest. Consequently, we determine that the department may not withhold any of the remaining information at issue pursuant to section 552.101 and common-law privacy.

We next address your claim under section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). In this case, the officer at issue has been terminated by the department. If the terminated officer remains either a licensed peace officer as defined by article 2.12 or a security officer commissioned under section 51.212 of the Education Code, the department must withhold the information we have marked section 552.117(a)(2).

Finally, the submitted documents contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

- (a) Information is excepted from the requirements of Section 552.021 if the information relates to:
 - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked information pertaining to Texas driver's licenses and Texas motor vehicle titles and registrations that the department must withhold under section 552.130.

In summary, we have marked the information that the department may withhold pursuant to section 552.108(a)(1) of the Government Code. We have also marked polygraph information that must be withheld under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the mental health information we have marked under section 552.101 in conjunction with section 611.002 of the Health and Safety Code. Any criminal history record information in the submitted documents must be withheld pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal regulations. We have marked the information that the department must withhold under section 552.101 in conjunction with common-law privacy. Provided the officer at issue is still a licensed peace officer, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. We have also marked information that must be withheld pursuant to section 552.130 of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/sdk

Ref: ID# 193005

Enc: Submitted documents

c: Ms. Tanya Eiserer
Dallas Morning News
P.O. Box 655237
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(w/o enclosures)